

## JUDGMENT SUMMARY

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| <b>Neutral Citation</b> | [2025] ADGMCFI 0003  |
| <b>Case Number</b>      | ADGMCFI-2024-045   |
| <b>Name of Case</b>     | Faysal Mohamad Awad v 3AM Property Investment Company LLC & Anor.  |
| <b>Judge</b>            | Justice Sir Andrew Smith   |
| <b>Date Issued</b>      | 7 March 2025   |
| <b>Catchwords</b>       | <i>Lex fori</i> governing rules of evidence and procedure. Requirements for binding contract. Statutory requirements for registration of disposition of land. Limitation defence. Remedy of specific performance. Power to appoint receiver. Estoppel <i>per rem judicatam</i> . Liability of manager under Article 84 of Federal Law 33/2021. Piercing of corporate veil.   |
| <b>Cases Cited</b>      | <p>NMC Healthcare LTD (in administration) and associated companies v Dubai Islamic Bank PJSC &amp; Others [2023] ADGMCFI 0017</p> <p>Cox v Ergo Versicherung AG [2014] UKSC 22</p> <p>Carl Zeiss Stiftung v Rayner &amp; Keeler Ltd (No 2) [1967] 1 AC 853</p> <p>Jetivia SA v Bilta (UK) Ltd [2015] UKSC 23</p> <p>Capewell v Revenue and Customs Comrs and another [2007] UKHL 2</p> <p>Abu Dhabi Court of Cassation, Case 171/2017 (24 October 2017)</p> <p>Abu Dhabi Court of Cassation, Case 210/2021 (15 March 2022)</p> <p>Abu Dhabi Court of Cassation, Case 11/2013 (24 April 2013)</p> <p>Abu Dhabi Court of Cassation, Case 73/2014 (20 July 2014)</p> <p>Abu Dhabi Court of Cassation, Case 1122/2021 (22 March 2022)</p> <p>Abu Dhabi Court of Cassation, Case 1237/2021 (22 March 2022)</p> <p>Good Challenger Navegante SA v Metalexportimport SA [2003] EWCA Civ 1668</p> <p>Jafari-Fini v Skillglass Ltd [2007] EWCA Civ 261</p> <p>Patel v Mirza [2016] UKSC 42 Stoffel and Co v Grondona [2020] UKSC 42</p> <p>Southern Foundries (1926) Ltd v Shirlaw [1940] AC 701</p> <p>Portland Stone Firms Ltd v Barclays Bank Plc [2018] EWHC 2341 (QB)</p> <p>Prest v Petrodel Resources Limited [2013] UKSC 34</p> <p>Abu Dhabi Court of Cassation, Case 335/2019 (19 November 2019)</p> <p>Abu Dhabi Court of Cassation, Case 863/2019 (19 November 2019)</p> |

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|  | Abu Dhabi Court of Cassation, Case 871/2019 (19 November 2019)  |
| <b>Legislation and Authorities Cited</b> | <p>Cabinet Resolution No. (41) of 2023 Regarding the Amendment of Cabinet Resolution No. (4) of 2013 Concerning the Determination of the Location and Area of the Abu Dhabi Global Market</p> <p>Abu Dhabi Law 4/2013 Concerning Abu Dhabi Global Market (the “Founding Law”) – Article 13</p> <p>Federal Decree Law 32/2021 on Commercial Companies – Article 84</p> <p>ADGM Court Procedure Rules 2016 – Rule 117</p> <p>Federal Decree Law 35/2022 Promulgating the Law of Evidence in Civil and Commercial Transactions – Article 66</p> <p>Abu Dhabi Executive Council Resolution 23/2005 – Article 1</p> <p>Federal Decree Law 19/2005 on Real Estate Ownership – Articles 1, 3 and 4</p> <p>Federal Decree Law 5/1985 on the Civil Transactions Law of the United Arab Emirates (the “Civil Code”) – Articles 125, 246(1), 257, 258, 266 and 272</p> <p>Federal Decree Law 8/1984 on Commercial Companies – Articles 56 and 57</p> <p>Federal Decree Law 3/2015 Concerning the Regulation of Real Estate Sector in Abu Dhabi – Article 30</p> <p>ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 – Section 41</p> <p>Abu Dhabi Presidential Decree of 5 May 2010</p> <p>Abu Dhabi Law 3/2005 Regulating the Real Estate Register in the Emirate of Abu Dhabi – Articles 6, 10 and 14</p> <p>ADGM Real Property Regulations 2024 - Sections 178(1) and 184(2)</p> <p>ADGM Application of English Law Regulations 2015</p> <p>Foreign Limitation Periods Act 1984</p> <p>Federal Decree Law 18/1993 on the Commercial Transactions Law – Articles 473, 478, 483 and 484</p> <p>Federal Decree Law 13/2019 Amending Certain Provisions of Federal Decree Law 19/2005 Concerning Real Estate Property Ownership – Article 3.2</p> <p>Federal Decree Law 50/2022 Promulgating the Commercial Transactions Law – Articles 86 and 87</p> <p>Dicey, Morris &amp; Collins on the Conflict of Laws (16th Ed, 2022)</p> <p>Chitty on Contracts (35th Ed, 2023)</p> <p>Megarry &amp; Wade: The Law of Real Property (9th Ed, 2019)</p> <p>Halsbury’s Laws of England, Vol 14 (5th Ed, 2023)</p> <p>Gower Principles of Modern Company Law (11th Ed, 2021)</p> |

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| <b>Executive Summary</b> | <p>This judgment considered various legal issues including the <i>lex fori</i> governing rules of evidence and procedure, requirements for a binding contract, statutory requirements for land disposition registration, limitation defence, specific performance, power to appoint a receiver, <i>estoppel per rem judicatam</i>, manager liability under Article 84 of Federal Law 33/2021, and piercing of the corporate veil.</p>   |
| <b>Overall Summary</b>   | <p><b>Background</b></p> <p>This Abu Dhabi Global Market (“ADGM”) Court of First Instance (Commercial &amp; Civil Division) judgment concerned a dispute between the Claimant, Mr Faysal Mohamad Awad, and the First Defendant, 3AM Property Investment Company LLC (“3AM”), along with the Second Defendant, Mr Adel Abdulhameed Ibrahim Abdulla Alhosani. The core of the dispute is a Land Investment Contract dated 23 October 2008 (the “LIC”), concerning a partnership for land on Al Reem Island, Abu Dhabi, where the Leaf Tower was built.</p> <p>Mr Awad initially pursued his claims in the Abu Dhabi Judicial Department (“ADJD”) in October 2022. He sought orders for the Defendants to comply with the LIC and register his share, among other things. 3AM responded with a counterclaim for the annulment of the LIC and monetary compensation.</p> <p>The ADJD Court determined that it lacked jurisdiction to hear the claims and counterclaims after a Cabinet Resolution in 2023 extended the area of ADGM to include Al Reem Island which was where the land in question was located, stating that ADGM Courts has territorial jurisdiction over the dispute. Mr Awad's appeal against this jurisdictional ruling was unsuccessful. Consequently, Mr Awad initiated these proceedings in the ADGM Court on 7 March 2024. The Defendants filed a Defence, and Mr Awad filed a Reply. The Second Defendant, Mr Alhosani, is the manager of 3AM and holds a 1% share. Mr Alhosani held a 96% holding in Maam Property Investment Company LLC, which holds 99% of 3AM.</p> <p>The trial commenced on 20 January 2025. Mr Awad gave evidence, and the Defendants called four witnesses, though Mr Alhosani did not testify. The Court noted that the procedural law governing the proceedings, including rules of evidence and available remedies, is that of ADGM (the <i>lex fori</i>).</p> <p><b>Analysis</b></p> <p>The Court had to determine several key issues regarding the LIC and the parties' conduct.</p> <ol style="list-style-type: none"> <li><b>Validity and Enforceability of the LIC:</b> The Court found that the LIC is a binding and enforceable contract under UAE law. The LIC explicitly states it is governed by the laws of the UAE. The Defendants' arguments that the LIC was invalid for lack of registration under Abu Dhabi laws or a Presidential Decree were rejected; the Court found these requirements were inapplicable or did not apply retrospectively to the nature of the LIC.</li> </ol> |

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|  | <p>2. <b>Nature of Mr Awad's Rights under the LIC:</b> A central issue was whether the LIC granted Mr Awad an <i>in rem</i> right or a right to own a share in the Land or the Leaf Tower. The Court interpreted Clause 5(4) of the LIC, which states the premises "shall be deemed the sole and exclusive property of [3AM] and [Mr Awad] as per the percentages distributed in Clause (8), Paragraph (3)". The Court concluded that, based on the objective meaning of the words, this clause related to sharing financial rights and obligations derived from the property, rather than transferring real property ownership rights. Therefore, Mr Awad did not acquire ownership rights in the Land or Tower under the LIC.</p> <p>3. <b>Contributions to the Project:</b> The Court examined the parties' financial contributions. Mr Awad claimed he contributed significantly more than 3AM, totalling AED 379,782,054.10, while 3AM's contributions were AED 45,666,776.90. The Court accepted Mr Awad's evidence regarding payments he made, including for initial works, payments towards the Land purchase, and payments channelled through Awtad Property Management LLC (an entity partly owned by Mr Awad and established for managing the Project). These payments included substantial sums received by Mr Awad under a "Fee Agreement" with the contractor, CCC, which he then directed to Awtad's account for Project expenses. The Court found the Defendants' implicit suggestion that these payments were part of a scheme to trick the bank into financing the full construction cost was not sufficiently pleaded or supported by cogent evidence. The Court decided the Contribution Issues in Mr Awad's favour, finding his contributions were AED 379,782,054.10 and 3AM's were AED 45,666,776.90. This meant 3AM would need to pay Mr Awad AED 167,057,638.60 for contributions to be equal.</p> <p>4. <b>Defendants' Complaints:</b> The Defendants made allegations against Mr Awad, including that he made no contribution and was guilty of wrongdoing. The Court rejected these complaints due to lack of evidence.</p> <p>5. <b>3AM's Breaches of the LIC:</b> Mr Awad alleged that 3AM breached the LIC. While the Court found 3AM did not contribute equally to costs, the obligation to reimburse the excess had not yet accrued. However, the Court found that 3AM was in breach of the LIC by taking control of the Project and excluding Mr Awad from his responsibilities, particularly by closing down Awtad's operations. Other complaints of breach, such as failing to register Mr Awad's share (which he didn't have) or preventing sales according to an unproven plan, were rejected.</p> <p>6. <b>Limitation Defence:</b> The Defendants argued the claims were time-barred under UAE law as proceedings were brought more than 15 years after the LIC was made. The Court rejected this, stating the period begins when the right is due for exercise. Furthermore, Mr Awad had commenced proceedings in the ADJD courts within the period, and the delay in bringing the ADGM</p> |
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|  | <p>action was due to the jurisdictional ruling, which provided a legitimate excuse. The Court also noted potential interruptions to the limitation period based on implied admissions by the Defendants regarding Mr Awad's share and contributions.</p> <p>7. <b>Mr Alhosani's Personal Liability:</b> Mr Awad sought to hold Mr Alhosani personally liable under Article 84 of the Commercial Companies Act, alleging fraudulent acts. The Court noted that this requires cogent evidence of fraudulent or improper conduct, not merely causing the company to breach a contract. The Court rejected the specific allegations of fraudulent intent at the time of signing the LIC, dishonesty in failing to reimburse Mr Awad (as the obligation was not due), and fraud regarding refusal to register Mr Awad's alleged share (as he had no ownership rights). While 3AM breached the LIC by taking control and undertaking Conversion Work, the Court found no evidence that Mr Alhosani's actions were dishonest or met the threshold for fraud, abuse of powers, or gross error under Article 84.</p> <p>8. <b>Piercing the Corporate Veil:</b> Mr Awad alternatively argued that the corporate veil of 3AM should be pierced to hold Mr Alhosani personally liable, citing the blurring of personal and company dealings. The Court applied the principle that piercing the corporate veil is reserved for exceptional cases involving the evasion of existing legal restrictions. The Court found that the case did not meet the criteria for piercing the corporate veil under ADGM or UAE law.</p> <p>The Court drew an adverse inference from Mr Alhosani's failure to give evidence, especially given the allegations against him. It also commented on the limited value of the evidence from Mr Afifi and Mr Tareef regarding financial arrangements, as they lacked direct knowledge.</p> <p><b>Conclusion</b></p> <p>The Court concluded that the LIC is a binding and enforceable contract and rejected the limitation defence. The Court found that Mr Awad did not acquire ownership rights in the Land or Tower under the LIC. The Court upheld Mr Awad's account of contributions, finding his total contributions significantly exceeded 3AM's, resulting in a debt owed to him by 3AM, though this debt is not yet accrued due. The Court found that 3AM breached the LIC by taking control of the Project and excluding Mr Awad from his responsibilities.</p> <p>The Court dismissed all claims against the Second Defendant, Mr Alhosani, finding no personal liability under Article 84 of the Commercial Companies Act or on the basis of piercing the corporate veil.</p> <p>The Court will hold a further hearing to hear submissions on the appropriate relief to be ordered based on its findings. This will include considering whether to appoint a receiver of the Project to protect the parties' interests, and the Court will invite observations from ADCB</p> |
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|  | regarding this potential remedy. Costs and other consequential matters will also be addressed at this hearing. |
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***This statement is not intended to be a substitute for the reasons of the Court or to be used in any later consideration of the Court's reasons.***